## REMARKS

Reconsideration and allowance are respectfully requested in light of the above amendments and the following remarks.

Claims 1-10 and 18 are pending. Claims 11-17 have been cancelled without prejudice or disclaimer.

Initially, Applicants thank the Examiner for withdrawing the rejection of claims 1 and 8 under 25 USC § 102(b) as allegedly being anticipated by JP 09-092279, as well as for indicating that if particular language from the specification were expressly recited by claim 9, the rejection of claim 9 as being anticipated by JP '279 would also be withdrawn. Accordingly, claim 9 has been so amended.

Additionally, new claim 18 has been added to more clearly define the invention. Specifically, this claim is a "product-by-process" claim, and is supported by, for example, original claim 1. No new matter is being entered.

I. 35 USC § 102

Claims 1-3 and 6-16 stand rejected under 35 USC § 102(e) as allegedly being anticipated by Ogasawara et al. (U.S. Patent No. 6,576,368). The Office Action asserts that this reference expressly teaches each feature recited by claims 1-3 and 6-10, and that the additional features added by claims 11-16 "of necessity will follow."

Applicants respectfully note that, as recited by the present claims, the nickel positive electrode active material of the present invention comprises nickel hydroxide particles and at least one rare earth compound, wherein the at lest one rare earth compound is produced by treatment with an aqueous alkaline solution and an oxidizing agent. In other words, the nickel

hydroxide particles of the present invention are not treated with the aqueous alkaline solution and oxidizing agent.

In contrast, in Ogasawara et al., both the β-nickel hydroxide and at the at least one additive are subjected to the oxidation treatment with an oxidizing agent in an aqueous alkaline solution. Following this oxidation step, the valance number of the nickel becomes 2.1-3.4. In order to attain the reduction of the discharge reserve, the oxidation of the nickel is essential (Column 3, lines 6-13). Thus, as the nickel hydroxide particles of Ogasawara et al. are treated with an aqueous alkaline solution and an oxidizing agent (and there is neither a teaching nor suggestion to do otherwise); Applicants respectfully submit that Ogasawara et al. fails to teach or suggest each feature recited by present claim 1.

II. 35 USC § 103

Claims 4 and 5 stand rejected under 35 USC § 103(a) as allegedly being unpatentable over Ogasawara et al. in view of Furukawa et al. (U.S. Patent No. 6,136,473). The Office Action asserts Ogasawara et al. teaches each feature of the rejected claims, except for the rare earth combination is yttrium-lutetium and ytterbium-lutetium, for which purpose Furukawa et al. is cited. However, as Furukawa et al. fails to cure the deficiencies of Ogasawara et al. noted in Section I above, reconsideration is respectfully requested.

III. Conclusion

In view of the above, it is submitted that this application is in condition for allowance and a notice to that effect is respectfully solicited.

If any issues remain which may best be resolved through a telephone communication, the Examiner is requested to telephone the undersigned at the local Washington, D.C. telephone number listed below.

Respectfully submitted,

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Date: September 23, 2004
JEL/EPR/att
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